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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,983	01/12/2001	Gabriel Grant Gamache	12929.1009USU1	1033

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EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 07/08/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/759,983

Applicant(s)

GAMACHE, GABRIEL GRANT

Examiner

Josiah C. Cocks

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on RCE filed 6/17/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/17/03 has been entered. As requested in this submission the amendment filed 3/26/03 has also been entered.

### *Claim Rejections - 35 USC §§ 102 & 103*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over *Heitland* (US # 605,713).

*Heitland* discloses in Figures 1-4 a fireplace having a combustion chamber formed by a firebox and front wall (see Figs. 1 and 3 and items e and d), the front wall including a door (e) that is pivotally mounted to the front wall about a horizontal axis such that in its closed position the door (e) is parallel to the front wall and in its open position forms a horizontal surface (see Fig. 1). In regard to the limitation of a shelf in claim 1, it would be inherent that the door (e) in its lowered position would function as a shelf. As shown in Fig. 3 the portion of the front wall (item d) at least partially encloses the combustion chamber. Further, *Heitland* specifically notes on page 2, lines 4-7 that heating box (B) with front door (e) may be built in with the fire-brick or lining of the combustion chamber.

5. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Heitland* (US # 605,713) in view of *Wilkening* (US # 4,515,146).

*Heitland* discloses all the limitations of claims 4-6 except doors pivotally mounted to the firebox or front wall which serve to enclose the combustion chamber and the front wall and firebox form a substantially air tight seal.

*Wilkening* teaches a fireplace door assembly comprising a front frame portion (10) and doors (15 and 16) pivotally mounted about a vertical axis, wherein the frame may be fastened to or within the opening of a fireplace (see col. 3, lines 57-59). *Wilkening* further teaches the desirability of a gasket (23) to form an effective airtight seal between the doors and the frame (10) (see col. 3, lines 35-57) and the frame and the firebox (see col. 1, lines 30-34 and lines 65-66).

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Therefore, in regard to claims 4-6, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the fireplace of *Heitland* to incorporate the frame and pivotal doors and air tight sealing of *Wilkening* for the desirable purpose of providing an easily adjustable means for closing off and effectively air tight sealing the front of the firebox opening.

***Response to Arguments***

6. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.


***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett, can be reached at (703) 308-0101. The fax phone numbers for this Group are (703) 308-7764 for regular communications and (703) 305-3463 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc  
June 27, 2003

  
JOSIAH COCKS  
PATENT EXAMINER  
ART UNIT 3743